

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1901 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE S.D.DAVE

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1. Whether Reporters of Local Papers may be allowed
to see the judgements? Yes
2. To be referred to the Reporter or not? Yes
3. Whether Their Lordships wish to see the fair copy
of the judgement? No
4. Whether this case involves a substantial question
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?
No

KACHARABHAI L LIMBACHIYA

Versus

RATANSINH J RATHOD-PATELIA

Appearance:

MR DF AMIN for Petitioner

MS NAYANA V PANCHAL for Respondent No.1 to 3
(absent)

SERVED for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE S.D.DAVE

Date of decision: 20/09/96

ORAL JUDGEMENT

Per: B.C.Patel,J:-

The appellant-owner of a tractor and a trolly has preferred this appeal against the award dated 4th December 1993, made by Motor Accident Claims Tribunal, Panchmahals at Godhra, in MAC Petition No. 213 of 1990. The claimants submitted an application inter alia contending that, on 12-2-90 deceased Sureshbhai while working as a labourer was sitting in the trolly attached with tractor no. G U H - 7809, which was driven by opponent no.1 in the application. The deceased was thrown off from the trolly as the tractor was being driven at an excessive speed by the opponent no.1 driver. The Tribunal after considering the evidence on record held that, the claimants are entitled to recover an amount of Rs.1,31,000-00 by way of compensation together with 15 % per annum from the date of application till its realisation. However, the Tribunal has further held that the liability of the Insurance Company is limited to the extent of Rs.50,000-00 only and the remaining amount of the award is to be recovered from opponent nos. 1 & 2 jointly and severally. Being aggrieved by this award of the Tribunal, the present appellant original opponent no.2 has preferred this appeal. The respondents though served have not chosen to appear before this Court.

Mr. D.F. Amin, learned advocate appearing for the appellant has said that the Tribunal had seriously erred in coming to the conclusion that, the Insurance Company is liable to pay an amount of Rs.50,000-00 only to the claimants and had further erred in coming to the conclusion that the remaining amount should be recovered from the appellant. He invited our attention to Section 147 of the Motor Vehicles Act 1988 (hereinafter referred to as the 'Act of 1988'), and the policy issued by the Insurance Company. The effective date of commencement of the insurance policy is 27-4-1989 and the date of expiry of insurance policy is 26-4-1990. According to the policy, limits of the amount of insurer's liability under Section 11-1 (ii) in respect of any one claim or series of claims arising out of one event is Rs.50,000-00. It appears that, in view of this, the Tribunal has said that the liability of the Insurance Company is to indemnify to the extent of Rs.50,000-00 only. The Motor Vehicles Act, 1988 came into force with effect from 1st July 1989, vide Notification No. S.O. 368 (E) dated 22-5-1989. Section 147 of the Act of 1988 which is in Chapter - XI refers to requirements of policy and limits of liability. Section 147 of the Act of 1988 reads as under:-

liability - (1) In order to comply with the requirements of this Chapter, a policy of insurance must be a policy which -

- (a) is issued by a person who is an authorised insurer; and
- (b) insures the person or classes of persons specified in the policy to the extent specified in sub-section (2)-
 - (i) against any liability which may be incurred by him in respect of the death of or bodily injury to any person or damage to any property of a third party caused by or arising out of the use of the vehicle in a public place;
 - (ii) against the death of or bodily injury to any passenger of a public service vehicle caused by or arising out of the use of the vehicle in a public place;

Provided that a policy shall not be required -

- (i) to cover liability in respect of the death, arising out of and in the course of his employment, of the employee of a person insured by the policy or in respect of bodily injury sustained by such an employee arising out of and in the course of his employment other than a liability arising under the Workmen's Compensation Act, 1923, in respect of death of, or bodily injury to, any such employee-
 - (a) engaged in driving the vehicle, or
 - (b) if it is a public service vehicle engaged as conductor of the vehicle or in examining tickets on the vehicle, or
 - (c) if it is a goods carriage, being carried in the vehicle, or
- (ii) to cover any contractual liability.

Explanation- For the removal of doubts, it is hereby declared that the death of or bodily injury to any

person or damage to any property of a third party shall be deemed to have been caused by or to have arisen out of, the use of a vehicle in a public place notwithstanding that the person who is dead or injured or the property which is damaged was not in a public place at the time of the accident, if the act or omission which led to the accident occurred in a public place.

(2) Subject to the proviso to sub-section(1), a policy of insurance referred to in sub-section (1), shall cover any liability incurred in respect of any accident, upto the following limits, namely :-

(a) save as provided in clause (b), the amount of liability incurred;

(b) in respect of damage to any property of a party, a limit of rupees six thousand:

Provided that any policy of insurance issued with any limited liability and in force, immediately before the commencement of this Act, shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy whichever is earlier.

(3) A policy shall be of no effect of the purposes of this Chapter unless and until there is issued by the insurer in favour of the person by whom the policy is effected a certificate of insurance in the prescribed form and containing the prescribed particulars of any condition subject to which the policy is issued and of any other prescribed matters; and different forms, particulars and matters may be prescribed in different cases.

(4) Where a cover note issued by the insurer under the provision of this Chapter or the rules made thereunder is not followed by a policy of insurance within the prescribed time, the insurer shall, within seven days of the expiry of the period of the validity of the cover note, notify the fact to the registering authority in whose records the vehicle to which the cover note relates has been registered or to such other authority as the State Government may prescribe.

(5) Notwithstanding anything contained in any law for the time being in force, an insurer issuing a policy of insurance under this section shall be liable to indemnify the person or classes of persons specified in the policy in respect of any liability which the policy

purports to cover in the case of that person of those classes of persons. "

Thus the policy of insurance should be in consonance with the provisions contained in Section 147 of the Act. Prior to coming in to force the Motor Vehicles Act of 1988, the policies were issued even for a limited liability. However sub-section (2) of Section 147 makes it clear that any policy of insurance issued with any limited liability and is in force immediately before the commencement of the act, the same shall continue to be effective for a period of four months after such commencement or till the date of expiry of such policy, whichever is earlier. Therefore, the policy if issued with a limited liability, then, so far as that limited liability is concerned, the same shall continue to be in force for a period of four months after the commencement of the Act, or till the date of expiry of a policy, whichever is earlier. In the instant case, as stated earlier, the policy is effective from 27-4-1989. Thus the policy has been issued before the commencement of the Motor Vehicles Act, 1988, hence that limited liability shall continue to be effective for a period of four months only. The date of expiry of the policy is 26-4-90, but as the period of four months would expire on 1st November 1989, the liability thereafter will not be limited. So when the accident in question took place on 12-2-90, in view of the proviso to sub section (2) of Section 147 of the Act of 1988, it cannot be said that the liability is limited. In view of Section 147 read with proviso thereto the liability of the insurer in the instant case is deemed to have been unlimited on the date of accident.

Since the liability of the insurer to pay the claim under an accident policy arises on the occurrence of the accident, and not until then, one must necessarily have regard to the state of the law obtaining at the time of the accident for determining the extent of the insurer's liability under a statutory policy. The governing factor in this behalf for determining the application of the appropriate liability is the date on which the cause of action accrued for enforcing the liability arising under the terms of the policy. In the instant case the vehicle has been insured under the provisions contained in the Motor Vehicle Act of 1939. Therefore the question is whether the provisions contained in section 147 of the Motor Vehicles Act 1988 should be applied or not ?

In case of Padma Srinivasan, Appellant v.

Premier Insurance Co. Ltd., Respondent (reported in AIR 1982 S.C., 836) the Apex Court considered the case, wherein the accident occurred on 5th April 1970 during the currency of the policy which covered the period from June 30, 1969 to 29th June 1970. The insurer's liability for third party risks under the said statutory policy was limited to Rs.20,000-00, according to the relevant legal provision as it existed on the date on which the policy came into force but which came to be extended to Rupees 50,000-00 w.e.f. 2nd March 1970 by an amendment. The Tribunal limited the liability of the respondent-insurer to a sum of Rs.50,000-00. However before the High Court it was contended that on the date on which the insurance policy was issued it was with a limited liability to a sum of Rs.20,000-00 only and that contention was accepted by the High Court. The Apex Court in that case considered the relevant provisions and held that " That must mean liability as determinable under Chap. VIII at the relevant time, that is to say, at the time when the liability arises. Since the liability of the insurer to pay a claim under a motor-accident policy arises on the occurrence of the accident and not until then, one must necessarily have regard to the state of the law obtaining at the time of the accident for determining the extent of the insurer's liability under a statutory policy. "

In the instant case, policy was issued by the Insurance Company in accordance with the provisions contained in the Motor Vehicles Act, 1939. Insurer's liability arising out of an accident on 12th February 1990 was to be determined on the basis of Act of 1988, though policy was issued under the provisions of Act of 1939. The said policy refers to the provisions of the repealed Act, but in view of Section 217 of the Act of 1988, the provision of the repealed Act referred in the policy is required to be construed as referring to the Act of 1988 or to the corresponding provision of Act of 1988. The words employed in Section 217(1)(a) of the Act of 1988, "any other thing done" must receive a liberal and extensive construction. It includes legal effects and consequences flowing from the thing done. The policy issued under the repealed Act, shall be deemed to have been issued under the corresponding provisions of Act of 1988, and shall be operative according to the provision of Act of 1988.

Section 217 of the Motor Vehicles Act 1988 is a repealing and a saving section. In view of provisions contained in sub sections (2)(a) and (2)(c) of Section 217, the policy issued under the old Act is deemed to have been issued under the provisions of the new Act.

More over the above proviso to sub section (2) of Section 147 of Act of 1988, safeguards the interest of the sufferers and the liability which is limited under the policy issued under the Act of 1939 shall be deemed to have been unlimited after the expiry of four months from the commencement of the Act of 1988 in the instant case. Therefore it is clear that the liability is unlimited and if that be so, in our view the Tribunal while limiting the liability of the insurer has committed a grave error and that must be rectified by allowing this appeal.

In the result the appeal stands allowed . Order passed by the Tribunal stands modified in so far as it pertains to the liability of Insurance Company and it is held that the Insurance Company is liable to satisfy the award. Appeal stands allowed accordingly.
